

Message Text

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DRAFTED BY L/OES:SJBURTON

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TAGS: PLOS

SUBJECT: LAW ENFORCEMENT UNDER ART. 23 HIGH SEAS CON-
VENTION

REFS: (A) CCGDFIVE 091758Z SEP 75

(B) CMDTCOGARD 092319Z SEP 75

1. ESTABLISHMENT OF HOT PURSUIT AND SEIZURE ON THE HIGH SEAS CONTEMPLATED REF. (A) IN ACCORDANCE WITH CONSTRUCTIVE PRESENCE DOCTRINE OF ARTICLE 23 OF THE CONVENTION ON THE HIGH SEAS REQUIRES MORE THAN MERE CONTACT BETWEEN TWO VESSELS ON THE HIGH SEAS, ONE OF WHICH LEFT AND SUBSEQUENTLY ENTERS U.S. CONTIGUOUS ZONE OR TERRITORIAL SEA AND VIOLATES U.S. LAW. TO COME UNDER ART. 23, PARA. 3, CLAUSE CONCERNING "OTHER CRAFT WORKING AS A TEAM AND USING THE SHIP PURSUED AS A MOTHER SHIP" REQUIRES EVIDENCE SUFFICIENT TO ESTABLISH THAT SHIP PURSUED IS CONDUCTING UNCLASSIFIED

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ILLEGAL ACTIVITIES IN AREA UNDER U.S. JURISDICTION (TERRITORIAL SEAS AND CONTIGUOUS ZONE), USING CONTACT BOAT FOR ITS PURPOSES. VESSEL PURSUED (MOTHERSHIP) WOULD BE CONSTRUCTIVELY PRESENT IN TERRITORIAL SEA OR CONTIG-

UOUS ZONE UNDER SUCH CIRCUMSTANCES. HOT PURSUIT

COULD THEN BE ESTABLISHED IF PROPER SIGNAL TO STOP GIVEN BEFORE VESSEL LEAVES AREA ADJACENT TO SEAWARD LIMIT OF 12 MILE CONTIGUOUS ZONE.

2. IF EVIDENCE IN POSSESSION OF ENFORCEMENT OFFICIALS, WHICH COULD BE PRESENTED IN COURT IF THAT BECOMES NECESSARY, ESTABLISHES CONTACT BOAT IS "OTHER CRAFT WORKING AS A TEAM AND USING THE SHIP PURSUED AS A MOTHER SHIP" SUCH AS TO ESTABLISH CONSTRUCTIVE PRESENCE OF MOTHER SHIP IN ACCORDANCE WITH PREVIOUS PARA, THEN PURSUANT TO ESTABLISHED PROCEDURES GOVERNING NON-MILITARY INCIDENTS DEPT WILL NOT OBJECT TO ACTION CONTEMPLATED REF (B) IF HOT PURSUIT ESTABLISHED AND MAINTAINED CONSISTENT WITH ARTICLE 23 OF HIGH SEAS CONVENTION. IN THIS CONNECTION, WE NOTE THAT UNDER BOTH PARAGRAPHS 1 AND 3 OF ARTICLE 23, THE BOAT OR OTHER CRAFT MUST BE WITHIN THE LIMITS OF U.S. TERRITORIAL SEA OR CONTIGUOUS ZONE TO COMMENCE HOT PURSUIT OF MOTHER SHIP; WE ASSUME FROM LIKELY FACTUAL SITUATION THAT THIS WILL OCCUR, BUT URGE CARE IN THE TIMING OF RELEVANT ACTIONS AS A PRECAUTION, PARTICULARLY AGAINST POSSIBLE LITIGATION. KISSINGER

UNCLASSIFIED

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